

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
IN ADMIRALTY
NO. 7:15-MC-5-JG

In re OCEANIC ILLSABE LTD,)	
ET AL.,)	
)	
Petitioners.)	MEMORANDUM IN SUPPORT OF
)	RESPONDENT'S MOTION TO DISMISS
v.)	FOR LACK OF PERSONAL
)	JURISDICTION, INSUFFICIENT
UNITED STATES OF AMERICA,)	SERVICE OF PROCESS, AND NON-
)	COMPLIANCE WITH COURT ORDER
Respondent.)	

Petitioners Oceanic Illsabe Ltd. and Oceanfleet Shipping Ltd. (collectively, "Petitioners"), have not properly served Respondent United States of America ("United States") as required by the Court's October 16, 2015, order. Consequently, the Court lacks personal jurisdiction over the United States. Pursuant to Federal Rules of Civil Procedure 12(b)(2) and 12(b)(5), as well as for non-compliance with the Court's order, the Court should dismiss Petitioners' petition for depositions.

FACTS AND PROCEDURAL HISTORY

On October 14, 2015, Petitioners filed a verified petition seeking depositions pursuant to Federal Rule of Criminal Procedure 15 and Federal Rule of Civil Procedure 27. [D.E. 1, 2]. Petitioners emailed courtesy copies of the filings to counsel for the United States, but did not serve the United

States in accordance with Federal Rules of Civil Procedure 4 and 27. See [D.E. 9, at 2].

On October 16, 2015, the Court ordered Petitioners to provide, by October 30, 2015, proof of service on the United States in accordance with Rules 4 and 27(a)(2). [D.E. 9, at 2]. On October 27, 2015, Petitioners filed proof of service and a supporting declaration explaining that Petitioners had served the United States Attorney for the Eastern District of North Carolina. See [D.E. 15, 15-1]. Petitioners did not provide proof of service on the Attorney General of the United States. See id.

The United States respectfully requests that the Court dismiss Petitioners' petition for lack of personal jurisdiction and insufficient service of process, as well as for non-compliance with the Court's order.

ARGUMENT

Failure to properly serve the United States deprives a court of personal jurisdiction over the government. See, e.g., Omni Capital Int'l, Ltd. v. Rudolf Wolff & Co., Ltd., 484 U.S. 97, 104 (1987), superseded on other grounds by Futures Trading Practices Act of 1992 § 211, Pub. L. No. 102-546, 106 Stat. 3590 (1992); Bland v. Britt, 271 F.2d 193, 194 (4th Cir. 1959) (per curiam); Mayberry v. United States, No. 5:11-CV-165, 2011 WL 3104696, at *2 (E.D.N.C. July 23, 2011) (unpublished). To

properly serve the United States, Rules 4(i) and 27(a)(2) require that a party seeking Rule 27 depositions both deliver a copy of the verified petition and notice of the hearing to the United States Attorney for the district where the action is brought, and deliver those same documents by registered or certified mail to the Attorney General of the United States in Washington, D.C. Fed. R. Civ. P. 4(i), 27(a)(2).

On October 16, 2015, the Court ordered Petitioners to comply with those requirements. [D.E. 9, at 2]. On October 27, 2015, Petitioners filed proof of service and a supporting declaration explaining that Petitioners had served the United States Attorney for the Eastern District of North Carolina. See [D.E. 15, 15-1]. Petitioners have not provided proof of service on the Attorney General. See id. Thus, Petitioners have not properly served the United States, depriving the Court of personal jurisdiction over the government. Further, Petitioners have not complied with the Court's October 16, 2015, order. See [D.E. 9, at 2]. The Court should dismiss the petition.

CONCLUSION

For the foregoing reasons, the Court should dismiss
Petitioners' petition.

Respectfully submitted, this 6th day of November, 2015.

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 6th day of November, 2015, served a copy of the foregoing Memorandum upon Petitioners' attorneys by electronically filing the foregoing using the CM/ECF system. I have served a copy of the foregoing Memorandum on the remaining individual counsel by both electronic mail and United States Postal Service.

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